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THE UNITED STATES OF AMERICA, PLAINTIFF VS. CITY OF ST. JOSEPH, MISSOURI, A MUNICIPAL CORPORATION DEFENDANT NO. 1077. TRANSCRIPT OF CONFERENCE FRIDAY, NOVEMBER 18, 1960 IN THE UNITED STATES DISTRICT COURT FOR THE WESTERN DISTRICT OF MISSOURI ST. JOSEPH DIVISION

DEPARTMENT OF JUSTICE, WASHINGTON, D.C.

PREPARED FOR
PUBLIC HEALTH SERVICE, WASHINGTON, D.C.

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THE UNITED STATES OF AMERICA, Plaintiff
vs.
CITY OF ST. JOSEPH, MISSOURI, a municipal corporation, Defendant

No.1077

TRANSCRIPT OF CONFERENCE

Friday, November 18, 1960 in

The United States District Court
for the Western District of Missouri
St. Joseph Division.

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IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF MISSOURI
ST. JOSEPH DIVISION

THE UNITED STATES OF AMERICA,
Plaintiff,
-vs-
CITY OF ST. JOSEPH, MISSOURI, a municipal corporation,
Defendant.

No. 1077

TRANSCRIPT OF CONFERENCE

BE IT REMEMBERED, that on Friday, November 18, 1960, a conference was had in the above entitled cause before the Honorable Richard M. Duncan, District Judge, at his courtrooms in St. Joseph, Missouri.

A p p e a r a n c e s

The Plaintiff was represented by Messrs. Henry Dopping and David R. Warner, Attorneys for the Department of Justice, Washington, D. C., and by Edward L. Scheufler, United StatesDistrict Attorney, Kansas City, Missouri.

The Defendant was represented by Joseph Wood, City Attorney of the City of St. Joseph, St. Joseph, Missouri.

W h e r e u p o n, the following proceedings were had and entered of record:

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THE COURT: I asked the parties to attend here for this rather informal conference preliminary to a general pre-trial conference. As you all know, this is a new statute, and is the first case of its kind I believe that has been filed. The discretion of the Court under the statute is very, very broad and it provides that the Court shall receive in evidence any transcript of testimony taken in any other proceeding, viz., any proceeding that is heard by the administrative body, and such further evidence as the Court in its discretion deems proper. Then, of course, it goes on that "the Court shall give due consideration to the practicability and to the physical and economic feasibility of securing abatement of any pollution proved, shall have jurisdiction to enter such judgment, and orders enforcing such judgment as the public interest and the equities of the case may require."

So, I say, it is a pretty broad discretionary power that is conferred upon the Court and I called this conference more or less informally to discuss the matter with the Government and with the attorney for the defendant, so that your views may be taken down and the Court may determine what evidence is to be received ultimately, not today I don't mean, in case it is tried. This is returnable to the March Term of Court. It will be a case that will take a considerable trial . I regret that the City's pleadings are

not in. There were some extensions of time to plead, and finally on the 7th of November, the City filed a motion to add additional parties to make the Mayor and City Council and members of the Council and all of the citizens of St. Joseph parties. Since neither the Mayor nor the members of the City Council are either proper or necessary parties, I couldn't quite take seriously the City's position that all of the citizens should be included, and the motion was summarily overruled. There is, therefore, no pleading now before the Court and I believe that the City is actually in default so far as its pleadings are concerned.

I don't know what position the City will take, but I should like to hear from the Government first as to its hearing of this case factually and legally, particularly as to the law, and I should like to hear from the City Counselor as to what the City's position is both with respect to the facts and to the law so far as you are able to do so at this time. Then following that we can set our plans for the procedure and what evidence is to be received.

So, Mr. Depping, you are here representing the Government. We would be glad to hear from you.

MR. DEPPING: May it please the Court, I realize that is a pretty broad order and I will try not to take any more time than necessary.

THE COURT: You understand the reason for the con-

ference, just so you can sort of advise each other and the Court where we are going.

MR. DEPPING: Before getting into the law I would like to give your Honor just a little bit of the background of this case. St. Joseph certainly should not be surprised that this suit has been brought. This anti-pollution statute was passed in 1948, what is called the Federal Water Pollution Control Act and I am sure your Honor is familiar with it.

Now, to start with, in that Act, Section 2, it is provided that the Surgeon General shall, after careful investigation, either prepare or develop a comprehensive program for eliminating or reducing the pollution of interstate waters, etc. Now that comprehensive program was developed. Ten states have joined in and set up standards for the water in the Missouri River. These states are Colorado, Iowa, Kansas, Minnesota, Missouri, Montana, Nebraska, North Dakota, South Dakota and Wyoming, and all of these states have, as I say, joined together to help departments and the various representatives of the state and have developed this comprehensive program which has been introduced into the case and I will not spend any more time on that.

Now this bill was passed after many lengthy hearings. Situations were called to the attention of the Committee exactly like the one here in St. Joseph. This bill was intro-

duced in 1948 by Senators Taft and Barclay and regardless of what you think of them separately, they are a pretty good team together and they both testified in behalf of this bill and I will not go into the details of it but one of the main things they were after there was to be sure that they weren't encroaching on the states and that there was state participation.

Now we have the state participation here. The State of Missouri has requested that this suit be brought. The State of Kansas has requested that it be brought, and the Public Health Service of the Department of Health, Education and Welfare has requested the Attorney General to bring this suit, and I want to say to your Honor that it is not mandatory that the Attorney General bring the suit, and that after these requests, after this hearing was held, there was very careful consideration given before this suit was finally brought.

Now I will not go into all of the details of the steps that are necessary to be taken. We alleged them in our petition, stating that they have all been complied with, but over a period of years the Missouri Health Department in cooperation with the Kansas Health Department have been conferring with the City of St. Joseph time and time again trying to get some sort of plan under way to end this pollution, and, as you know, two bond elections have failed, and finally after the hearing to which reference has been

made when all of this evidence was taken, the bond issue failed again and no other action has been taken.

The Secretary of Health, Education and Welfare set up a study that is provided for in the law for St. Joseph to meet. They are in default in that schedule now, and, as I say, all of the precedural steps have been taken.

Now I will not take the time to go into all of the findings at that hearing. There are some 700 pages and about 40 exhibits.

Mr. Murray Stein, the Chief of the Enforcement Section, is here and I was asking him last night just what the other cities have been doing along the river. It might be of interest. He started to tell me what Portland, Oregon had done and I said just to start on this river. They started at Yankton, South Dakota, Vermillion -- they are on the same plan; Sioux City, Iowa, their engineering plan is completed; also Sioux City, their schedule is up to date; Omaha is on schedule. Just last week they voted $10,700,000. and they have voted about $11,000,000. in the past.

Here is an important one: Atchison, Kansas has completed the primary treatment plant. Atchison, Kansas is a city right across the river, as you know, which uses this sewage from St. Joseph for its water after it is run through the water plant, but even though St. Joseph is still dumping their sewage on down to Atchison, Atchison,

Kansas, has completed their plans and over at Leavenworth they have gotten together with the Federal authorities and contracts are ready to be let, just, as you know, Kansas City, Kansas, has voted $10,000,000 and Kansas City, Missouri, $75,000,000 and North Kansas City $8,000,000, making a total of $98,000,000 in bonds all down the river from St. Joseph. Independence has already installed the same type of treatment plant that the state and federal agency has been trying to install here in St. Joseph. St. Louis is on schedule and their engineers' plans have been completed and in the suburbs there some $10,000,000 has already been voted. St. Louis is on schedule and I cross over the Mississippi River to the east and then quit because I think I have gone far enough down the river, but right across the river there are 21 different communities there on the Mississippi who are all on schedule.

Now I point this out to show that certainly St. Joseph is not being picked on here. There was some talk of that in the hearing and it seems that these officials have been extremely generous in their delays. They have had exaggerated patience with St. Joseph, Missouri, and their real excuse I guess is stated in this motion. Here is what this motion shows what this case really boils down to in both of these elections, the brief in support of their motion overruled and in both of these elections the people of the

City of St. Joseph have indicated at the polls that they do not wish to have these bonds issued and thus subject themselves to this oppression. They simply cannot get away with that under the law.

I wonder could it be that the idea is abroad that if St. Joseph will just keep voting down bond issue after bond issue that they can keep polluting the river? Well, if you examine this law and the citations on enforcement and on injunctions in pollution cases, you will find they simply cannot do that. Now they have delayed and delayed and delayed and the time is here, your Honor, when we believe that something should be done and we are happy that you called this conference so we could at least get something started and find out where they are and I would like now to ask counsel for St. Joseph, when do you file your answer?

MR. WOOD: The answer is ready. I will not have it on this hearing. I proceeded to set up the procedure and it should bring out the objectives, how we are going to do it, etc. We have some way to base the theory on our answer now. Are you against the City or what are you trying to do?

MR. DEPPING: Do you mean to say you do not know what the objective is?

MR. WOOD: I don't know the objective.

THE COURT: I want the City on record as well as the

Government.

MR. DEPPING: Then to start with, what can be done? They have not followed the time table. The suit now has been brought after all of this delay. Now I suppose the question is if the City is enjoined, what power does the Court have to enforce its order.

THE COURT: That is the primary question in my mind exactly. I have no question, except to know the procedure.

MR. DEPPING: Now, of course, everybody knows, 18 U.S.C.A., Section 401, provides "A court of the United States shall have power to punish by fine or imprisonment, at its discretion, such contempt of its authority, as disobedience or resistance to its lawful writ, process, order, rule, decree or command."

Of course, everybody knows that the City can't be put in jail, but there are other ways to handle the situation, and the first case I want to call to your Honor's attention is the case of New Jersey vs New York City. I might say at this point that I have a brief here. We were in the process of finishing up a brief on the motion to add these additional defendants when we found out that the motion had been overruled, but I brought the brief along anyway because we put in at least some of our cases. It is not a complete brief on the subject but some of them are there on this series, and I will hand counsel a copy.

THE COURT: I haven't seen it.

MR. DEPPING: Now this case of New Jersey versus New York City. New York City was dumping its garbage into the harbor and the waters washed the garbage over onto the shores of New Jersey. Suit was brought against New York City to enjoin them from doing this. I think there are at least two opinions in the case. A master was appointed and hearings were held and it was finally decided that they would build incinerators, that New York City was to build incinerators to dispose of the garbage and quit dumping it into the ocean and washing it over on New Jersey. They couldn't raise the money and they had delays of that kind and finally -- I will not go into the details of it because it is all in there in the opinion, but I will read the order that was entered. This is the Supreme Court speaking in 290 U. S. 237:

> "1. On and after July 1, 1934, the defendant, The City of New York, its employees and agents, and all persons assuming to act under its authority, be and they are hereby enjoined from dumping, or procuring or suffering to be dumped, any garbage or refuse, or other noxious, offensive or injurious matter, into the ocean, or waters of the United States, off the coast of New Jersey, and from otherwise defiling or

polluting said waters and the shores or beaches thereof or procuring them to be defiled or polluted as aforesaid.

2. If defendant shall fail to comply with paragraph 1 of this decree by July 1, 1934, it shall pay to plaintiff $5,000.00 a day until it does so comply; such payments however are to be without prejudice to any other relief to which complainant may be found entitled.

3. Plaintiff shall have and recover from defendant the sum of $2,160.79 for the use and benefit of its political subdivisions above referred to."

Now right there in that one case is authority enough for your Honor to fine the City of St. Joseph so much a day if they disobey the decree of this Court.

Now, in another case, Wisconsin versus Illinois, 281 U. S. 179, there was a suit in which the State of Illinois and the Sanitary District of Chicago were enjoined from diverting waters from the Great Lakes in excess of certain amounts for carrying away the sewage of Chicago. Honorable Charles Evans Hughes was the master in the case, and there are two opinions, one by Mr. Justice Taft and the other by Mr. Justice Holmes. The point was being made

that Illinois didn't have the money to complete the facilities. It was not a treatment plant, but facilities for carrying away the sewage in compliance with the order of the Court as to the diversion of waters from the lake, and on that point Mr. Justice Holmes very succinctly stated it this way:

> "It already has been decided that the defendants are doing a wrong to the complainants and that they must stop it. They must find out a way at their peril."

So it seems that the city of St. Joseph is doing a wrong and they must find a way out at their peril.

Now, I might call your Honor's attention -- but I won't take the time to find it now --

THE COURT: It is all in the brief, that will clear the situation.

MR. DEPPING: I have a decree in one of these cases, in Wisconsin versus Illinois. Here is the decree I was looking for in the Wisconsin-Illinois case.

> "On and after July 1, 1930, the defendants, the State of Illinois and the Sanitary District of Chicago, are enjoined from diverting any of the waters of the Great Lakes,"

and it sets out how much water they shall use and all that.

Now, number 5:

"That the defendant the Sanitary District of Chicago shall file with the clerk of this court semi-annually on July first and January first of each year, beginning July first, 1930, a report to this court adequately setting forth the progress made in the construction of the sewage treatment plants and appurtenances outlined in the program as proposed by the Sanitary District of Chicago, and also setting forth the extent and effects of the operation of the sewage treatment plants, respectively, that shall have been placed in operation, and also the average diversion of water from Lake Michigan.

"That on the coming in of each of said reports, and on due notice to the other parties, any of the parties to the above entitled suits, complainants or defendants, may apply to the court for such action or relief, either with respect to the time to be allowed for the construction, or the progress of construction, or the methods of operation, of any of said sewage treatment plants, or with respect to the diversion of water from

Lake Michigan, as may be deemed to be appropriate."

Then there is another provision that they may file a decree for any further relief that they might desire.

There are two opinions in the Sanitary District case. The one I read a while ago is the one by Mr. Justice Holmes, and this one in 278 U. S., at page 397, by Mr. Justice Taft, and I just will read one paragraph or so from that.

"The Sanitary District authorities, relying on the argument with reference to the health of its people, have much too long delayed the needed substitution of suitable sewage plants as a means of avoiding the diversion in the future. Therefore they can not now complain if an immediately heavy burden is placed upon the District because of their attitude and course."

That is exactly what has been going on here.

"The situation requires the District to devise proper methods for providing sufficient money and to construct and put in operation with all reasonable expedition adequate plants for the disposition of the sewage through other means than the Lake diversion.

"Though the restoration of just rights to the complainants will be gradual instead of immediate it must be continuous and as speedy as practicable, and must include everything that is essential to an effective project."

I don't know what more authority is needed than that language by Mr. Justice Taft and the $5,000.00 a day penalty imposed upon New York City, and I might say that the imposition of that penalty, your Honor, worked wonders. The incinerators were built and the garbage was no longer dumped into the New York Harbor, and if New York City had been permitted to do what St. Joseph is trying to do here, just say they are going to vote down the bond issue each time, they still might be floating their garbage I suppose over there off of the shores of New Jersey.

Now there are some other cases here, your Honor. I might say that a point has been made here too, and, of course, it is more or less hoped that St. Joseph is a guinea pig, but I think I have told you enough in the beginning to show you that St. Joseph is not being picked on, but there are all kinds of cases in the books on pollution cases against cities.

There is one cited against the City of Harrisonville. They were running sewage against the W. S. Dickey farms.

THE COURT: The question is not whether the city is being "picked on". The Court has a law suit before it and

whatever the law is, whether it is abused or isn't --

MR. DEPPING: What I was coming to, your Honor, is that there are so many cases in the books.

THE COURT: I understand.

MR. DEPPING: Cases in which cities have been enjoined from polluting streams, I mean before ever this law was passed, and I just have a few of them from New Jersey but I am not going to read any more. They are right there in the brief, but one of the points in one of the cases is that the people did not have the money and they started right out -- had they proceeded promptly to carry out their plans, it is probable that the expense would have been much less than was necessary at the later date. They knew in 1935 when some contracts were entered into that they were going to have to sooner or later meet this, but they put it off and didn't have the money, and the Court held in that New Jersey case that that was absolutely no defense.

Now, one other thing that I forgot to mention is that some people may seem to think that because St. Joseph is a municipality that they have some right to pollute the stream. Now, in the first place, I don't have them in this brief because we weren't briefing that point. There is no such thing as a prescriptive right to maintain a nuisance, and as a municipality, 18 McQuillan on Corporations at page 536 states, "The general rule in most states is that if a

nuisance is created, a municipality is liable, for as has been said, 'a municipality has no more right to pollute waters than has an individual'", and further on page 540, "In a proper case of polluting, discharging sewage may be prevented by injunction", and in a note there are thirteen different citations, and it is also to be noted that in this act municipalities are defined, recognized and no doubt the true defenders of the law would be municipalities. Municipalities are defined in Section 46(c).

Now, I believe that is all that I have for the moment, your Honor, unless you would like to ask some questions.

THE COURT: After I hear from Mr. Wood. Mr. Wood, what do you have to say?

MR. WOOD: There is not too much that I can add here. There is no argument with these people about this situation. I think it simply boils down to a practical matter how we are going to get this done. I am not saying this is not a good thing or we shouldn't do it or you don't have the power to do it, or anything like that. I am simply asking you people how are we going to do it? If you want to fine the City or put a padlock on, that is fine, but that is not going to correct the matter. The City Council, the Mayor, and everybody stands ready to do whatever you people ask in the way of getting something done that is in our power

and we still hold that position. You are talking about us being in default. We were on schedule up to the time of this election. The election was held on schedule. The people have turned the bond issue down. That put a quietus on us right there when they did that. We were finished as far as getting any money. We stood waiting to see what you people would say what we should do next. So far as I know we have never been contacted by any of your group since that time with any specific recommendations of what is the next step to be taken. If we had, we would certainly have complied. We would have done whatever you had liked within our power. We still say we will do that.

Like I say, putting a padlock on the City Hall isn't going to relieve the situation. You say they must find a way at their peril. That seems like a way of dodging the issue, if you can't we are going to lock the door and close you up. About the only thing I can repeat or say in the situation is that I have talked to the Council and I have talked to the Mayor. They stand ready to put this issue before the people again at whatever time and do it any way you people see fit to do it, and beyond that, I don't know what else we can do.

As I have stated in the brief and in our motion, and you people evidently feel the same way, it is the people of the City who are polluting the river. The City as an

appropriate entity is not arbitrarily holding up any action. We have passed ordinances, we have declared an election, done everything that is within our power and stand ready to do that yet, but if you think that by ordering us to do something that is not within our power to do, we regret the situation and I fail to see how that is going to get the job done, but as I tell the Court, we do stand ready to do anything and everything that is within our power and I don't see how we can do things more than that.

THE COURT: Well, Mr. Wood, I doubt that that is an answer to this situation. While this matter is before the Court for final determination, the Court cannot prejudge it and has no intention to at this time, or of expressing any opinion about the factual situation, but I doubt that it is the duty of the Government to advise the City as to what course it shall take. That is the sole responsibility of the City as to what its course shall be to eliminate this situation.

(Whereupon, discussion was had off the record.)

While I have not had an opportunity to read the decisions defining the law applicable to this situation, in a general way I know what it is, and there has never been the slightest thought in the mind of the Court that it had the power through its decree, to say to the City Council that it should pass an ordinance calling an election to vote bonds for

the financing of a sewage disposal plant. That is purely a Governmental function on the part of the City, and this Court has no right to dictate such a function.

This Court cannot say to the Mayor that he shall act in any particular manner or that he should sign any ordinances that might be passed by the Council. The Court can only deal with the situation as the facts develop and the law directs.

The sole question for the Court to determine is whether or not the conditions described in the Government's Complaint that the dumping of sewage into the river is resulting in its pollution within the meaning of the Act. In determining that question the transcript of the testimony taken by the administrative body is admissible in evidence, and such other evidence as the Court desires to hear is admissible. If either of the parties has any evidence in addition to that contained in the transcript, the Court will determine the admissibility of that evidence. The Court may also require additional evidence which is not in the transcript, or which neither party proposes to introduce.

I shall be glad to have the suggestions of either party, in due time, as to what additional evidence, if any, it may desire to present, and following such suggestions if the Court desires additional evidence, that desire will be made known to the parties.

I think we had better have another conference in this matter either in January or February, and determine at that time what progress has been made.

The question of adequate water supply for the entire country is becoming increasingly perplexing, and as it does become more perplexing, the question of the pollution of the streams presents a most serious problem.

Until a few years ago the garbage produced by most cities was gathered up and disposed of through feeding to hogs or buried, or in some other like manner, but during the past decade practically every new house that has been constructed has a garbage disposal and many thousands of older kitchens have been rebuilt and garbage disposals installed. This means that the accumulation of garbage is ground up and enters the sewers and dumped into the streams and contributes to the pollution of the streams. These are all matters about which the Court can almost take judicial notice.

As the living conditions in cities become more complicated, so does the problem of the pollution of streams become more complicated. This is the problem which the Government is apparently attempting to solve.

In making these statements the Court does not mean to prejudge the facts in this case. I suggest Mr. Wood, that you file your answer within ten days. There can be no further motions in the case. When you have filed your answer, then

we will know how to proceed.

It will likely take some time to get this case ready for trial, and the Court would like to know what the issues are as soon as possible. It would like to have an engineering estimate as to the cost of the construction of a sewage disposal plant and the probable length of time required to construct such a plant. When that has been done the Court will lay down the ground rules, so to speak, for further action to be taken by the parties.

If the City refuses to meet the situation as the Government insists that it should, and if, upon a trial of the case the Court should determine that the dumping of sewage into the river results in pollution, then the Court must determine what the penalty should be. It does not mean the locking of the City Hall as suggested by the City Counselor, but it might mean the sticking of the juridical hand into the City's till by way of the imposition of a fine or penalty. That is the only power this Court has in such cases.

A municipal corporation is like any other corporation made up of stockholders, the City's stockholders being its citizens. Such stockholders become responsible for the action and conduct of its Board of Directors.

The Mayor and the Common Council cannot compel the citizens to vote a bond issue, but such officers can, in the performance of their corporate duties, initiate the proceed-

necessary for the citizens' approval. In other words, can put into operation the necessary machinery to bring about the desired result.

The administrative body has conducted its hearing and there is before the Court a transcript of 775 pages of testimony taken at that hearing. Pursuant to that hearing it duly served notice upon the City as to its findings.

I do not propose to engage in a long hearing in this matter. The issues should be made comparatively simple. The Court will then make its findings of fact and conclusions of law and enter its judgment accordingly.

It is to be hoped that an understanding may be reached as a result of this meeting that will preclude the extreme penalty which the law apparently provides.

Now, Mr. Wood, I do not believe, as heretofore stated, that it is the duty or responsibility of the Government to say to the City, "You must have a bond issue", or that you shall do any other positive act except to cease dumping sewage into the waters of the river, if that is being done. The manner in which that is to be done is to be determined by the City and not by the Government.

The Government has already made its requirements under the statute. This was done by the conduct of the hearing, by the service of notice upon the City, and upon failure to comply with that notice, the filing of this suit.

The City Counselor has suggested that all that can be done has been done, that it is not possible for it to comply with the orders of the department concerning the pollution of the river. If that is to be the position of the City, then, of course, the case will have to be proceeded with in accordance with that view, not losing track of the fact that in this case as in every other case it is the duty of the Government to prove its case by the preponderance of the evidence, i.e., prove the waters of the Missouri River are being polluted by the dumping of the City sewage into it.

I think the Court should proceed to the hearing and determination of this case in the regular course, which will be at the March term, unless by that time it is apparent that the City is making some effort to solve the problem.

MR. DEPPING: If there is to be additional evidence, that problem can be handled by pre-trial conference.

THE COURT: Yes, I would think so.

MR. DEPPING: But I might say this, that the great part of the evidence of the Government is all in that transcript, and after we get into that, some of the points that you raise and some of the points that might be raised in the pre-trial conference might require some additional evidence. We might want to supplement some and we might want to call some witnesses back to explain their testimony, but I am absolutely convinced right now, after a thorough study of this transcript,

that the Government has all the evidence that it needs.

THE COURT: It is generally known, I am sure, that the Court has long been familiar with the situation in St. Joseph dating back over a period of more than thirty years when the Judge of this Court was the City Counselor of this City and had to deal with many problems concerning the gathering and disposal of garbage.

The problem of providing a purification plant or whatever method is adopted for handling its sewage, presents a rather unusual situation in St. Joseph.

Again referring to my personal experiences with the problems of St. Joseph, I engaged in the re-valuation of some of the City's utilities and in the negotiation of utility rates with respect to other utilities in St. Joseph, and the question was often asked why a differential in ready-to-serve or minimum charges in St. Joseph. The answer was that St. Joseph lies along the Missouri River extending in an area five or six miles north and south and about two miles east and west, and in that area a much larger population could be served by the existing facilities. The same is true with respect to the sewage system. There are a great number of combination storm and sanitary sewers in St. Joseph which present a further complication in the solving of the present pollution problem.

All of these are matters which the Court must ultimate-

ly take into consideration if it becomes necessary to try this case, and it is information concerning these matters that the Court must have upon the record although they may be within the knowledge of the Court to a considerable degree.

I am glad that the Department of Justice has assigned Mr. Depping to handle this case. As we know, Mr. Depping, a former Kansas City Attorney, has had very wide experience in the handling of a great mass of important litigation. A considerable part of that important litigation was handled before the judge of this Court.

I am sure that he and Mr. Warner, who is head of the Lands Division of the Department under which this litigation comes, can be depended upon to help solve the problem.

Gentlemen, I shall be glad to have any further suggestion either of you have as to the introduction of testimony in this case, if it is necessary to try it. I shall call another conference if it seems advisable, around the middle of January or the early part of February.

I appreciate also the position that the City Council is in and the City Administration. I assume they will make another attempt to get the bond issue through. I do not know but I think we can anticipate it. So, Mr. Wood, I hope that you will feel free to advise with these gentlemen and with the Court, if you desire, in a matter where there is such broad discretion as there is in this case imposed upon the Court.

I am glad to be at your service any time. Do you have something to say?

MR. WARNER: I was just wondering, your Honor, if you contemplate attempting to set a formal pre-trial conference this morning?

THE COURT: No, sir, I do not. I think there is nothing we can do now. I do not know what will happen. We will get your views and the views of the City and unless you have something to suggest --

MR. DEPPING: I imagine I should inquire with reference to the possibility which we could not see and for which we continue to hope, that the City might go ahead and call another election.

THE COURT: I suppose that is true.

MR. DEPPING: I was simply curious at this time if Mr. Wood could make any statement as to how long the procedure requires for calling another election, if the City should desire to do so.

MR. WOOD: I might say that usually we figure we are cutting the corners in considering the time plus the publication as forty-five days. That would be pretty quick and perhaps I am premature in saying it now because there has nothing been done, but it has been the concensus of opinion that perhaps the best we could do would be the end of February or perhaps right after the first of March, and I

think it is primarily a job of educating -- and I might add that I voted for the bond issue myself at the last election, and it was close -- and it is primarily a job of education and this is something that the City says came up over night. Of course, the old people are all home owners and vitally interested and the old people would like that we should not change their views over night.

THE COURT: We are talking critically now and not legally. You have already had ample time to educate the people.

(Whereupon, discussion was had off the record.)

I do not want anything I have said to be taken as the final, ultimate conclusion of the Court. This is informal. I want you to all understand each other. You understand their position and they understand your position and I understand both of your positions.

MR. DEPPING: We have not filed this brief in answer to the motion because we learned that you had overruled the motion.

THE COURT: Mr. Wood, I did not write an opinion when I overruled the motion, but to make all of the people of St. Joseph parties is a physical and legal impossibility. Every time a new child is born and every time some one died, you would have to amend, and all that sort of thing. That is one of the utterly impossible things to do.

MR. DEPPING: The reason the brief is not signed is because it is not filed.

THE COURT: Do you want to file it?

MR. DEPPING: No, we don't want to file it, but we had those other things in it.

THE COURT: Just so I have it.

MR. DEPPING: It is not filed and it is not a complete brief on the subject any way because we were just waiting.

THE COURT: Is there anything else that anybody wishes to say? I will be glad to hear you on it.

MR. WOOD: I do not believe there is anything I have to say.

THE COURT: I am glad to meet with you, and whatever you are going to file, please get it in and sometime in January we may come back again.

AND, the foregoing were all of the proceedings had at such informal hearing.

C E R T I F I C A T E

I, EMILY F. MILES, a Shorthand Reporter, do certify that I was personally present as the official reporter at the informal conference in the above entitled cause at the time and place set forth in the caption sheet hereof; that I then and there took down in shorthand the proceedings had at said time, and that the foregoing is a full, true and correct transcript of such shorthand notes so made at such time and place.

Emily F. Miles

Official Reporter